उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक Cr. App. 606 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No. 606 /2002

APPELLANT Suban son of Jaydeo Mahra, aged about 36 years, resident of Dhurawa Para Raikot, Police Station- Kodenar, District Bastar(CG)

Versus

RESPONDENT State of Chhattisgarh

CRIMINAL APPEAL u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C. BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

Appearance:

Smt. Usha Chandrakar, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State.

ORAL JUDGMENT
(01.11.2007)

L.C. Bhadoo, J:-

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 15th April, 2002, passed by the IV Additional Sessions Judge, Jagdalpur in Sessions Trial No.83/2001, whereby, the learned Additional Sessions Judge after

शासकीय क्षेत्रीय मुद्रणालय, रा...दगांव —FS/59— 8/2007 —30,000.

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

holding the accused/appellant guilty of the offence punishable under Section 302 of IPC for committing murder of his mother-in-law namely -Satmi, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months.

The case of the prosecution in brief is that Satmi (since deceased) was mother-in-law of the accused/appellant-Suban. Daughter of Satmi namely-Rambati was married to the accused/appellant; however, the accused/appellant contracted a second marriage with a lady named- Manki Bai. Rambati and Manki Bai used to quarrel; therefore, Rambati went to her parental house. On the fateful day, her father and mother along with other persons came to the village of the accused/appellant at Raikot along with Rambati to drop Rambati at the residence of the accused. At that time, the accused/appellant attacked Satmi with a club on her head, as a result of which, she fell down and blood started oozing out of the injury. When the club was snatched from the accused/appellant by the family members of Satmi, the accused went inside the house, brought a crow-bar and attacked with the crow-bar on the thigh of Satmi. Satmi was taken to Maharani Hospital, Jagdalpur. While undergoing the treatment she succumbed to the injuries on 13.1.2001.

On receiving information from the hospital, Head Constable of Kotwali Police Station, Jagdalpur reached to the hospital, where,

शासकीय क्षेत्रीय मुद्रणालय, रा... 8/2007 —30,000.

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Dehati Nalishi Ex. P/1 was written and given by Sonaru father-in-law of the accused/appellant. The Investigating Officer prepared inquest Ex.P/2 on the body of Satmi. Postmortem on the body of Satmi was conducted by Dr. K.B. Sharma (PW-4). He opined that the cause of death was shock as a result of head injury (Compression and laceration of brain) and its complications. The death was homicidal in nature. F.I.R. Ex.P/13 was registered. Site plan Ex. P/14 was prepared

After completion of the investigation, charge sheet was filed in the Court of J.M.F.C. Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur from where the learned IV Additional Sessions Judge, Jagdalpur received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellant examined 9 witnesses. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against him and stated that he is innocent and has been falsely implicated in the crime.

The accused/appellant produced 3 defence witnesses, who have stated that Satmi sustained the injury on account of fall, as her head dashed against the door.

शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The learned Additional Sessions Judge, after hearing the counsel for respective parties, convicted and sentenced the accused/appellant as aforementioned.

We have heard Smt. Usha Chandrakar, learned counsel for the appellant and Shri Akhil Mishra, learned Panel Lawyer for the State.

Smt.Usha Chandrakar has not disputed the homicidal death of Satmi. Moreover, PW-1 – Sonaru, husband of the deceased, PW-2 – Shanti, PW-3 – Kumari have stated that in their presence only, the accused/appellant attacked the deceased – Satmi with a club on her head. The above ocular evidence is corroborated by the medical evidence of Dr. K.B. Sharma(PW-4), who has stated that on 13.1.2001, he conducted postmortem on the body of Satmi and there were following injuries :

(1). contusion 3" x 1" over right side of forehead and right parietal region of scalp.

(2). Contusion 3" x 2" over left thigh.

On deception of the body, it was found that clotted blood was present above the brain and brain membrane. Small particles were present in the wind pipe.

On opening the head, it was found that the right side temporal parietal region of brain was lacerated in the size of 2"x 2". Clotted blood was present on the left side of brain. Clotted blood was present in the brain membrane. Cause of death was shock

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

due to head injury and its complications. His report is Ex.P/3. In view of the above ocular and medical evidence, it is established that the death of Satmi was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-1- Sonaru, husband of the deceased, has stated that his daughter Rambati was married to the accused/appellant. As his daughter came to his residence after some quarrel at her matrimonial house, he along with Satmi, Miri, Shanti and other persons went to drop Rambati at the residence of the accused/appellant- Suban at Raikot. When they reached to the house of the accused, the accused came with a club and attacked Satmi on her head. When the club was snatched from him, he brought a crow-bar and attacked with that crow-bar on the left thigh of Satmi. Thereafter, they took Satmi to the Tokapal hospital, from where; they took her to Jagdalpur Hospital, she died while undergoing the treatment. Sonaru gave report Ex.P/1 . The above evidence of Satmi is corroborated by the evidence of PW-2- Shanti, who has also stated that the accused/appellant attacked Satmi with a club when they reached the house of accused/appellant along with Rambati, as a result of which, Satmi sustained injury on her head and she became unconscious. The evidence of these 2 witnesses is further corroborated by the evidence of PW-3- Kumari, who has categorically stated that the accused is residing at Raikot. Rambati and Satmi(since deceased) are known to her. Rambati is

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the wife of the accused/appellant, whereas, Satmi was the mother-in-law. Satmi died on account of head injury inflicted by the accused/appellant with a club. She only snatched the club from the accused, on which, the accused went inside the house, brought a crow-bar and attacked with that on the left thigh of Satmi. In the cross-examination of these 3 witnesses, defence has not been able to elicit any circumstance, which makes the evidence of these witnesses untrustworthy. All the 3 witnesses are natural witnesses and they have categorically stated that on the fateful day, they along with some other persons went to the house of the accused/appellant to drop Rambati, wife of the accused/appellant and daughter of Satmi at the residence of the accused/appellant, there some quarrel started between Rambati, first wife of the accused and Manki Bai, second wife of the accused brought by him after his marriage with Rambati. The above ocular evidence is corroborated by the evidence of PW-4- Dr. K.B. Sharma, who examined the injuries and conducted autopsy on the body of Satmi. He categorically stated that there were injuries on head and thigh region. Therefore, in view of the ocular and medical evidence, it is established that the accused/appellant was the author of the crime in question and he inflicted the injury on the head of Satmi with a club. To this extent, we do not find any illegality or infirmity in the judgment of the trial Court.

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —7—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Smt. Chandrakar, also submitted that the whole incident happened on account of quarrel between the 2 wives of the accused/appellant and it is not a case, where the accused/appellant attacked the deceased (Mother-in-law) with an intention to case her death, therefore, the offence against the accused/appellant does not travel beyond Section 304 part-II of IPC.

On the other hand, Shri Akhil Mishra supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the parties, we have scrutinized the material available on record. PW-1- Sonaru, husband of the deceased and father of Rambati(wife of the accused), has categorically stated that as his daughter Rambati came to his house from her matrimonial house on account of some quarrel, he decided to drop her to her matrimonial house. When they went to the house of the accused along with Rambati, the accused/appellant attacked his wife-Satmi with a club. In the cross-examination, he had stated that it is correct to say that the accused/appellant brought second wife. When they reached to the house of the accused/appellant along with his daughter- Rambati, first wife of the accused, his second wife- Manki Bai was at his residence. The accused/appellant attacked Satmi without any reason. PW-2- Shanti, daughter-in-law of Sonaru, in para 9 of her cross-examination has stated that

शासकीय क्षेत्रीय मुद्रणालय, [illegible]—FS/59— 8/2007 —30,000.

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

when both the ladies were quarrelling and Satmi was intervening, the accused/appellant brought a club, which hit Satmi and she became unconscious and thereafter she was taken to the hospital. PW-3- Kumari has also admitted in para 5 of her cross-examination that when they reached at Raikot to the house of accused/appellant, some quarrel started between Manki Bai, second wife of the accused/appellant, Rambati(daughter of PW-1-Sonaru) and Satmi. There was no dispute between Suban and Satmi. Why the accused attacked Satmi, is not known? On account of the assault made by the accused/appellant with a club to Satmi, she became unconscious. Thereafter, a Panchayat was convened in the village.

A perusal of the Panchayat proceedings Ex.D/1-C reveals that on 12.1.2001, a Gram Panchayat at Raikot in connection with the dispute between 2 wives of the accused/appellant namely-Rambati and Manki Bai was convened and in the proceedings, it has been mentioned that Rambati was married about 12 years back with Suban and thereafter, Suban married another girl namely-Manki Bai. Quarrel started between Rambati and Manki Bai, but no final decision was arrived in the Panchayat. However, it is mentioned that the dispute started on account of Manki Bai-second wife of the accused. Therefore, in view of the above material available on record, it is established that after the marriage of the accused/appellant with Rambati, the

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 9 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused/appellant again contracted a second marriage with Manki Bai and both wives used to quarrel, therefore, Rambati left the matrimonial house and went to her parental house. On the fateful day, Satmi (since deceased), her husband – Sonaru and other family members along with Rambati came to the house of the accused/appellant. There again some quarrel started between the 2 ladies and the accused/appellant attacked the deceased (mother-in-law) with a club and that proved fatal and on account of head injury, Satmi died next day in the hospital while undergoing the treatment.

In the given circumstances, which have been extracted above, it cannot be inferred that the accused/appellant attacked the deceased with an intention to cause her death. The dispute started when the deceased along with her husband and daughter came to the house of the accused, they dropped her there. Rambati and Manki Bai the 2 wives of the accused/appellant started quarreling and at that time, without preparation and pre-meditation, the accused/appellant attacked the deceased with a club on her head only once, which proved fatal and Satmi died on account of the injury sustained by her. She died in the hospital on 13.1.2001. However, the manner in which, the accused/appellant attacked the deceased-Satmi with the club on her head, it can be inferred that the accused had definite knowledge that he may likely to cause her death. Therefore, the offence against the

शासकीय क्षेत्राय मुद्रणालय, रायपुर(छ.ग.) —FS/59— 8/2007 —30,000.

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —10—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused/appellant does not travel beyond Section 304 part-II of IPC.

In the result, the appeal succeeds partly. The conviction and sentence imposed against the accused/appellant under Section 302 of IPC are set aside. Instead thereof, he is convicted under Section 304 part –II of IPC and sentenced to undergo R.I. for 8 years. It is stated that the accused/appellant is in detention since 19.1.2001 till date; therefore, the accused/appellant shall be entitled for the set off of the above detention period already undergone against the sentence imposed upon him.

Sd/-
L.C. BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

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शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.